

## Internal Revenue Service

Number: **200847004**

Release Date: 11/21/2008

UIL: 9100.00-00, 992.02-00

In Re:

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-106130-08

Date:

August 07, 2008

### Legend

Date 1 =

Taxpayer =

State A =

Sister Corporation =

Products =

Accounting Firm =

Year 1 =

Law Firm =

Date 2 =

Date 3 =

Date 4 =

Dear \_\_\_\_\_ :

This responds to your letter dated Date 1, requesting a ruling that grants Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A (including the shareholder consent statements) in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i), thereby allowing Taxpayer to file a Form 4876-A that will be treated as timely filed within 90 days after the beginning of its first taxable year.

The rulings given in this letter are based on facts and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Facts**

Taxpayer is a State A corporation. Taxpayer intended to be treated as an interest charge domestic international sales corporation (“IC-DISC”) since its inception, acting as an IC-DISC on a commission basis with Sister Corporation.<sup>1</sup> Sister Corporation is incorporated in State A and manufactures Products. The ownership of Taxpayer and Sister Corporation is identical. Taxpayer uses a taxable year accounting period ending December 31, and uses the accrual method of accounting to maintain its books and records.

Accounting Firm has served as Sister Corporation’s primary tax advisor and accounting firm for four years. During Year 1, Accounting Firm recommended forming an IC-DISC. Accounting Firm furnished Sister Corporation and its shareholders information addressing the basic IC-DISC tax structure and related tax aspects. In addition, Accounting Firm represented that its professionals were well versed in the technical tax considerations associated with the establishment and operation of an IC-DISC. Sister Corporation and its shareholders concluded that it would be appropriate to establish an IC-DISC, and engaged Accounting Firm to perform all tasks necessary to qualify Taxpayer as an IC-DISC for federal tax purposes.

Law Firm was then hired to incorporate Taxpayer. Law Firm drafted and reviewed all documents with respect to Taxpayer’s formation and incorporation. Law Firm formed Taxpayer as a State A corporation and ensured that Taxpayer was properly capitalized and had only one class of stock with the proper par value and voting rights. Accounting Firm recommended that Taxpayer maintain a separate bank account and that Taxpayer and Sister Corporation enter into an IC-DISC commission agreement. Once this agreement was executed and the bank account was established, Taxpayer began

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<sup>1</sup> As explained below, although Taxpayer acted as an IC-DISC, it was not, in fact, an IC-DISC.

operating as an IC-DISC. Neither Accounting Firm nor Law Firm prepared or timely filed Form 4876-A on Taxpayer's behalf.

Sister Corporation and its shareholders were not familiar with the procedural requirements for making a valid IC-DISC election. They relied on Accounting Firm and Law Firm with respect to establishing Taxpayer as an IC-DISC. At all times, Taxpayer, Sister Corporation, and its shareholders believed Accounting Firm employed qualified tax professionals competent to qualify Taxpayer as an IC-DISC for federal tax purposes.

Taxpayer's first taxable year ended on Date 2. Taxpayer timely filed a tax return for its first taxable year before the due date (including extensions) of Date 3. Taxpayer received a notice dated Date 4 from the Internal Revenue Service (the "Service") requesting a copy of the originally filed Form 4876-A or a copy of the acceptance letter. Taxpayer contacted Accounting Firm to request a copy of the Form 4876-A. After Accounting Firm reviewed the Taxpayer's file, it was determined that the Form 4876-A was never filed with the Service. Consequently, taxpayer did not satisfy the requirements to be treated as an IC-DISC.

The period of limitations on assessment under section 6501(a) has not expired for Taxpayer's taxable years for which the election is being made or any taxable years that would have been affected by the election had Taxpayer made a timely election.

Taxpayer has requested a ruling that grants an extension of time to file Form 4876-A within 60 days from the issuance of a favorable ruling letter so that the form will be treated as timely filed within 90 days after the beginning of its first taxable year.

### **Law and Analysis**

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in Treas. Reg. § 1.992-2(a)(1), (b)(1), and (b)(3) shall apply

to the manner of making the election and the manner and form of representing shareholder consent to the election.

Treas. Reg. § 1.992-2(a)(1)(i) provides that, except as otherwise provided in paragraphs (b)(3) and (c) of that section, the election to be treated as a domestic international sales corporation shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876-A when filed with the service center.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interest of the Government.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we concluded that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A and the shareholder consent statements required by Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent statements, or to

claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be filed with the Form 4876-A and shareholder consent statements.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

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Christopher J. Bello  
Chief, Branch 6  
Office of Associate Chief Counsel  
(International)

cc: